



House of Representatives

General Assembly

File No. 546

January Session, 2003

Substitute House Bill No. 6679

House of Representatives, April 24, 2003

The Committee on Public Health reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING COMPENSATION FOR SMALLPOX VACCINE INJURIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) For purposes of sections 1 to
2 4, inclusive, of this act:

3 (1) "Administration of a covered countermeasure" includes, but is
4 not limited to, the physical administration of a covered
5 countermeasure, education and screening of covered countermeasure
6 recipients, monitoring, management and care of the covered
7 countermeasure site, evaluation of the efficacy of covered
8 countermeasures, and contact transmission of vaccinia;

9 (2) "Covered countermeasure" has the same meaning as provided in
10 42 USC 233, as from time to time amended; and

11 (3) "Qualified person" has the same meaning as provided in 42 USC
12 233, as from time to time amended.

13 Sec. 2. (NEW) (*Effective from passage*) (a) In response to the
14 declaration issued on January 24, 2003, by the Secretary of Health and
15 Human Services pursuant to Section 304 of the Homeland Security
16 Act, P.L. 107-296, there is established a Connecticut Public Health
17 Smallpox Response Team that shall be responsible for administering a
18 covered countermeasure to persons in this state who choose to receive
19 a covered countermeasure in the event the Secretary of Health and
20 Human Services advises a state-wide administration of a covered
21 countermeasure pursuant to Section 304 of the Homeland Security Act,
22 P.L. 107-296. Such team shall consist of (1) individuals who voluntarily
23 receive a covered countermeasure, (2) qualified persons, and (3)
24 entities including, but not limited to, hospitals, under whose auspices
25 covered countermeasures are administered.

26 (b) The Commissioner of Public Health shall designate, in writing,
27 the members of the Connecticut Public Health Smallpox Response
28 Team and maintain a list of the individuals and entities that are
29 members of said team. Such individuals shall be designated prior to
30 receiving a covered countermeasure, except that those individuals who
31 received a covered countermeasure prior to the effective date of this
32 section shall be deemed to have been placed on such list prior to
33 receiving the covered countermeasure.

34 (c) Any incidence of illness, injury, disability or death directly or
35 indirectly resulting from the administration of a covered
36 countermeasure shall be reported by any person licensed pursuant to
37 chapter 370, 378, 379, 384 or 384d of the general statutes, or by any
38 institution licensed pursuant to section 19a-490 of the general statutes,
39 to the Department of Public Health. On or before July 1, 2003, October
40 1, 2003, January 1, 2004, and April 1, 2004, the department shall submit
41 a report, in accordance with section 11-4a of the general statutes,
42 summarizing such incidences to the joint standing committee of the
43 General Assembly having cognizance of matters relating to public
44 health, provided said report shall be in compliance with the Health
45 Insurance Portability and Accountability Act of 1996, 42 USC 1320d,
46 and shall not disclose the names of individuals who experience illness,

47 injury, disability or death. The department shall submit a complete
48 report in the same manner upon completion of the first stage of the
49 administration of a covered countermeasure.

50 (d) The Department of Public Health shall provide public notice of
51 the medical protocols proposed to set minimum safety standards for
52 the administration of covered countermeasures in the state. The
53 department shall allow for public comment on such protocols, and
54 shall consider and respond to such comment. If changes are made to
55 the protocols after their adoption, the department shall publicize the
56 proposed changes and accept public comment on such changes.

57 Sec. 3. (NEW) (*Effective from passage*) No individual or entity that (1)
58 is a member of the Connecticut Public Health Smallpox Response
59 Team, and (2) administers or receives a covered countermeasure, or
60 under whose auspices a covered countermeasure is administered or
61 received in accordance with a declaration issued pursuant to Section
62 304 of the Homeland Security Act, P.L. 107-296, shall be personally
63 liable for any injury, illness, disability or death occurring to an
64 individual that arises from the administration or receipt of the covered
65 countermeasure, unless such administration or reception is wanton,
66 reckless or malicious. To the extent permitted by the Homeland
67 Security Act, P.L. 107-296, any person having a complaint for such
68 injury, illness, disability or death may present it as a claim against the
69 state in accordance with the provisions of chapter 53 of the general
70 statutes.

71 Sec. 4. (NEW) (*Effective from passage*) (a) For purposes of this section,
72 "employer" and "employee" shall have the same meaning as in section
73 31-275 of the general statutes.

74 (b) Notwithstanding any provision of chapter 568 of the general
75 statutes, for any employee who (1) is covered by an approved workers'
76 compensation plan, and (2) either (A) has received a covered
77 countermeasure as a member of the Connecticut Public Health
78 Smallpox Response Team established pursuant to section 2 of this act,
79 or (B) is or was employed by the same employer at the same time as a

80 member in subparagraph (A) of this subdivision, and had exposure to
81 such member, there shall be an irrebuttable presumption that any
82 injury, illness, disability or death of any employee as the result of
83 receiving a covered countermeasure or a secondary transmission of a
84 covered countermeasure, occurred while such employee acted within
85 the scope of such employee's employment.

86 (c) Any individual who (1) is not covered by an employer's workers'
87 compensation plan, (2) either (A) has received a covered
88 countermeasure as a member of the Connecticut Public Health
89 Smallpox Response Team established pursuant to section 2 of this act,
90 or (B) had exposure to a member in subparagraph (A) of this
91 subdivision, and (3) experiences injury, illness, disability or death as
92 the result of receiving a covered countermeasure or a secondary
93 transmission of a covered countermeasure, shall be deemed to be a
94 state employee in the unclassified service and there shall be an
95 irrebuttable presumption that such injury, illness, disability or death
96 occurred while such individual was so deemed. Such individual shall
97 be eligible for compensation pursuant to chapter 568 of the general
98 statutes for such injury, illness, disability or death, provided a claim
99 shall be made, in writing, to the workers' compensation commissioner
100 for the district in which the claimant resides or resided within one year
101 from the first manifestation of a symptom. The workers' compensation
102 commissioner shall determine the amount of weekly benefit consistent
103 with chapter 568 of the general statutes, for which such individual may
104 be eligible, except such individual shall not receive less than the
105 minimum weekly wage as determined by the Labor Commissioner for
106 a forty-hour workweek. The workers' compensation commissioner
107 shall determine the length of eligibility for such weekly benefit,
108 consistent with the provisions of chapter 568 of the general statutes.

109 (d) Notwithstanding any provision of chapter 568 of the general
110 statutes, receipt of workers' compensation benefits pursuant to this
111 section shall not bar an individual from seeking or obtaining
112 compensation pursuant to the federal Tort Claims Act, as provided in
113 Section 304 of the Homeland Security Act, P.L. 107-296.

114 Sec. 5. (NEW) (*Effective from passage*) Each individual health
 115 insurance policy providing coverage of the type specified in
 116 subdivisions (1), (2), (4), (5), (11) and (12) of section 38a-469 of the
 117 general statutes, delivered, issued for delivery, amended, renewed or
 118 continued in this state on or after the effective date of this section, shall
 119 provide coverage for any adverse health events that occur as the result
 120 of receiving a smallpox vaccination or acquiring vaccinia virus
 121 infection through contact with a smallpox vaccinee.

122 Sec. 6. (NEW) (*Effective from passage*) Each group health insurance
 123 policy providing coverage of the type specified in subdivisions (1), (2),
 124 (4), (5), (11) and (12) of section 38a-469 of the general statutes,
 125 delivered, issued for delivery, amended, renewed or continued in this
 126 state on or after the effective date of this section, shall provide
 127 coverage for any adverse health events that occur as the result of
 128 receiving a smallpox vaccination or acquiring vaccinia virus infection
 129 through contact with a smallpox vaccinee.

130 Sec. 7. (NEW) (*Effective from passage*) The Department of Public
 131 Health, in consultation with the Attorney General and the Workers'
 132 Compensation Commission, shall develop, no later than thirty days
 133 after the effective date of this section, informational materials
 134 explaining the protections provided in the Homeland Security Act,
 135 P.L. 107-296 and in sections 1 to 6, inclusive, of this act, for individuals
 136 who (1) receive a covered countermeasure, or (2) receive a covered
 137 countermeasure due to a secondary transmission. The department
 138 shall distribute such materials to any individual prior to such
 139 individual receiving a covered countermeasure. The department shall
 140 also provide such materials to each individual who received a covered
 141 countermeasure prior to the date thirty days after the effective date of
 142 this section.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>

Sec. 4	<i>from passage</i>
Sec. 5	<i>from passage</i>
Sec. 6	<i>from passage</i>
Sec. 7	<i>from passage</i>

PH *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Workers' Comp. Claims-Admin. Serv. Dept.	GF - Cost	Potential Significant	Potential Significant
Workers' Compensation Com.	WCF - Cost	None	None
Attorney General	GF - Cost	None	None
Claims Comr., Off.	GF - Cost	Indeterminate	Indeterminate
Public Health, Dept.	GF - Cost	None	None
St. Employees Health Serv. Cost	Various - Cost	None	None

Note: GF=General Fund; WCF=Workers' Compensation Fund

Municipal Impact:

Municipalities	Effect	FY 04 \$	FY 05 \$
All Municipalities	STATE MANDATE - Cost	Potential Significant	Potential Significant

Explanation

This bill establishes a Connecticut Public Health Smallpox Response Team. The bill also establishes that first responders have an irrebuttable presumption that any injury, illness, disability or death as a result of receiving the smallpox vaccination or from secondary transmission occurred within the scope of their employment. The bill mandates workers' compensation coverage, under the state program, to response team members who are not covered by an employer's workers' compensation plan, and also to those who received a secondary transmission under certain conditions.

The state has solicited approximately 6,000 people to receive the smallpox vaccination on a voluntary basis. As of April 18, 2003, 578 people have been vaccinated, with no serious side effects or cases of secondary transmissions reported. Eventually, there will be as many as

20,000 - 30,000 response team members receiving the vaccine.

The fiscal impact of this bill on the state and municipalities (in particular those municipalities that are self-insured) could be potentially significant. Workers' compensation liability for each smallpox-related case can vary significantly, with an adverse event involving a death having costs estimated at \$1 - \$2 million. The Centers for Disease Control and Prevention estimates that 1 in every 1,000 people vaccinated will suffer non-life threatening serious illness, and that 1-2 people per million will die.

Based on the estimate of 20,000 - 30,000 response team members receiving the vaccine, the number of potential smallpox hearings before the Workers' Compensation Commission can be handled without additional funding.

Section 3 of the bill makes any member of the state's Smallpox Response Team immune from civil liability for damages stemming from unintentionally negligent administration of a smallpox vaccination or receipt and secondary transmission of it when done in accordance with a declaration issued pursuant to Section 304 of the federal Homeland Security Act. Since state employees and entities might be part of the Smallpox Response Team and not necessarily "covered persons" who are indemnified by the U.S. Government, this provision precludes a potential, significant state cost for judgments that might have been rendered against it.¹

Section 3 of the bill also permits civil claims to be filed against the state with the Office of the Claims Commissioner if certain conditions are met. The potential cost of this liability is significant. The potential caseload increase to the Office of the Claims Commissioner and the Office of the Attorney General as a result of this provision is

¹ Section 304 of the federal Homeland Security Act defines a "covered person" as (i) the manufacturer or distributor; (ii) the health care entity under whose auspices such countermeasure was administered; (iii) a qualified person who administered such counter measures; or (iv) an official, agent, or employee of (i), (ii), or (iii). An action against a "covered person" would be brought against the U.S. Government as a Federal Tort Claims Act.

indeterminate, as is the resulting fiscal impact.

Section 6 of the bill requires certain group health insurance policies to cover adverse events arising from smallpox vaccination or from secondary transmission situations. The state employees health plan already covers adverse events related to a procedure. It is anticipated that the medical costs associated with smallpox vaccine injuries of state employees covered under the bill will be covered under worker's compensation and will not impact the state employees health service cost account. To the extent that the coverage required under the bill is not currently provided under a municipality's employee health insurance plan, there may be increased municipal health costs to provide it. The bill's impact on municipal health insurance costs will vary by municipality depending on the current coverage and cannot be determined.

The consultation required in Section 7 of the bill represents a workload increase to the Office of the Attorney General that could be handled within anticipated budgetary resources.

The Department of Public Health will be able to perform duties specified in this bill within its anticipated budgetary resources.

OLR Bill Analysis

sHB 6679

**AN ACT CONCERNING COMPENSATION FOR SMALLPOX
VACCINE INJURIES****SUMMARY:**

This bill addresses liability and workers' compensation protections for certain health care workers who voluntarily receive and administer smallpox vaccinations ("covered countermeasures") as part of Connecticut's Smallpox Response Team. The Department of Public Health (DPH) commissioner must designate and keep a list of this team, which is established in response to a January 2003 declaration of the federal Department of Health and Human Services (HHS).

The bill requires certain state licensed health professionals and institutions to report to DPH cases of harm or death directly or indirectly resulting from administration of the vaccine. DPH must also give the public notice and an opportunity to comment on the medical protocols used in establishing minimum safety standards for vaccine administration. DPH must make periodic reports to the Public Health Committee on these incidents.

Under the bill, smallpox response team members who administer vaccinations according to the declaration are not personally liable for injury or death arising from administering or receiving the vaccine, unless this is done in a wanton, reckless, or malicious manner.

The bill provides workers' compensation coverage for those covered by workers' compensation through their employer who (1) are vaccinated as a member of the response team or (2) were exposed to a team member when employed at the same time by the same employer and were injured due to a secondary transmission. It deems as a state employee for workers' compensation coverage purposes, those individuals suffering harm who are not covered by an employer's workers' compensation plan and either are a response team member or were exposed to a member as described above and received a secondary transmission. The bill also specifies that receiving workers' compensation benefits under the bill does not bar seeking

compensation under the Federal Tort Claims Act.

The bill requires certain group and individual health insurance policies to cover adverse events arising from smallpox vaccination or from secondary transmission situations.

Finally, the bill directs DPH, in consultation with the attorney general and the Workers' Compensation Commission, to develop informational materials related to the vaccination program and federal and state law.

EFFECTIVE DATE: Upon Passage

DEFINITIONS

The bill defines a "covered countermeasure" as a substance used to prevent or treat smallpox (vaccinia or another vaccine) or vaccinia immune globulin to control or treat the adverse effects of vaccinia inoculation.

It defines "administration of a covered countermeasure" as the physical administration of a covered countermeasure, education and screening of covered countermeasure recipients, monitoring, management and care of the covered countermeasure site, evaluation of the countermeasures' efficacy, and contact transmission of vaccinia.

A "qualified person" is a licensed health professional or other person authorized to administer a countermeasure under the law of the state in which it was administered.

CONNECTICUT PUBLIC HEALTH SMALLPOX RESPONSE TEAM

The bill establishes a "Connecticut Public Health Smallpox Response Team" in response to the January 24, 2003 declaration of the secretary of the federal Department of Health and Human Services (HHS), according to Section 304 of the federal Homeland Security Act (see BACKGROUND). The team is responsible for administering smallpox vaccination to people in the state electing to receive it if the HHS secretary advises a statewide administration according to Section 304 of the Homeland Security Act. The team includes those voluntarily receiving the vaccination, qualified persons, and entities (such as hospitals) under whose auspices vaccinations are administered.

The DPH commissioner must designate in writing the members of the team and keep a list of the individuals and entities on the team. These individuals must be designated before receiving the vaccination, except that a person receiving the vaccination before the bill's effective date is deemed to have been put on the list prior to receiving it.

REPORTS OF ILLNESS, INJURY, DISABILITY, OR DEATH

The bill requires state-licensed physicians and surgeons, nurses, dentists, veterinarians, and paramedics, as well as licensed health care institutions, to report to DPH incidences of illness, injury, disability, or death that result directly or indirectly from administration of the smallpox vaccine. DPH must report to the Public Health Committee by July 1, 2003, October 1, 2003, January 1, 2004, and April 1, 2004 summarizing such incidences. The reports must comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and not disclose the names of those experiencing illness, injury, disability, or death. The bill requires DPH to submit a complete report after the first stage of vaccination is completed.

MEDICAL PROTOCOLS

DPH must give public notice of the medical protocols proposed to set minimum safety standards for vaccine administration. DPH must allow public comment on the protocols and must consider and respond to the comments. If changes are made to the protocols after their adoption, DPH must publicize them and take public comment.

LIABILITY PROTECTION

The bill provides that individuals or entities that (1) are members of the smallpox response team and (2) administer or receive a vaccination or under whose auspices a vaccination is administered or received according to the declaration are not personally liable for any injury, illness, disability, or death of a person arising from the administration or receipt of the vaccination. But the bill does not provide liability protection if the vaccination administration or reception is wanton, reckless, or malicious.

To the extent allowed by the federal Homeland Security Act, a person with a complaint of injury, illness, disability, or death may make a

claim against the state.

WORKERS' COMPENSATION COVERAGE

This bill establishes an irrebuttable presumption that any injury, illness, disability, or death of an employee as the result of receiving a vaccination or a secondary transmission of it occurred while the employee acted within his scope of employment. The presumption applies to any employee who (1) is covered by an approved workers' compensation plan and (2) either (a) received a covered vaccination as a member of the response team or (b) was employed by the same employer at the same time as a response team member and was exposed to that member.

The bill deems as a state employee in the unclassified service any person who (1) is not covered by an employer's workers' compensation plan, (2) either received a vaccination as a response team member or was exposed to a member as described above, and (3) has an illness, injury, disability, or death as a result of receiving the vaccination or a secondary transmission of it. The bill makes it an irrebuttable presumption that the harm occurred while the individual was a state employee as so deemed.

Under the bill, such a person would be eligible for workers' compensation for such harm, if a written claim is made to the workers' compensation commissioner for the district where the person resides or resided within one year from the first symptom appearing. The commissioner must determine the weekly benefit amount the individual may be eligible for according to the workers' compensation laws. The person may not receive less than the minimum weekly wage as determined by the labor commissioner for a 40-hour workweek. The commissioner must also determine the eligibility length for the benefit, consistent with existing law.

The bill specifies that receiving workers' compensation benefits according to the bill does not prohibit a person from seeking compensation under the federal Tort Claims Act, as provided in the Homeland Security Act.

HEALTH INSURANCE COVERAGE

The bill requires certain individual and group health insurance policies

to cover any adverse health events occurring as the result of receiving a smallpox vaccination or acquiring vaccinia virus infection through contact with someone who has been vaccinated. This applies to policies delivered, issued for delivery, amended, continued, or renewed in the state on or after the bill's effective date that pay for (1) basic hospital expenses, (2) basic medical-surgical expenses, (3) major medical expenses, (4) disability coverage, (5) hospital or medical expenses, and (6) hospital and medical expenses covered by HMOs.

INFORMATIONAL MATERIALS

The bill requires DPH, in consultation with the attorney general and the Workers' Compensation Commission, to develop informational materials that explain protections in the Homeland Security Act and in the bill for those receiving vaccinations and those receiving a secondary transmission. These materials must be developed within 30 days after the bill's effective date and distributed to individuals before they receive the vaccination. Also, DPH must distribute them to those vaccinated prior to 30 days after the bill's effective date.

BACKGROUND

Section 304 of the Federal Homeland Security Act

Section 304 of the Homeland Security Act (P.L. 107-296) provides an exclusive remedy against the United States for injury or death attributable to smallpox vaccine, other substances used to treat or prevent smallpox, or vaccinia immune globulin ("smallpox countermeasures"). This means that no claim for liability for injury or death attributable to a smallpox countermeasure could be brought against individuals or entities covered by Section 304. Those covered are smallpox vaccine manufacturers and those healthcare entities administering the vaccine. Section 304 is triggered when a smallpox countermeasure is administered according to a declaration by the HHS secretary that specifies the administration of particular countermeasures to one or more categories of individuals, as well as the duration of the declaration.

Workers covered by state workers' compensation statutes who suffer work-related injuries from the countermeasure may be banned from submitting a section 304 claim if those state laws constitute an exclusive remedy.

HHS Secretary's Declaration

The HHS secretary issued a declaration on January 24, 2003, stating "that a bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified in this declaration for prevention or treatment of smallpox or control or treatment of adverse events related to smallpox vaccination, to categories of individuals named in this declaration." The declaration is effective until January 24, 2004 and can be extended or shortened by a subsequent amendment to it.

Individuals covered by the declaration are (1) health care workers who may be called upon to monitor or treat any persons who are (a) either covered by the declaration or (b) deemed to be individuals to whom a covered countermeasure was administered; (2) any person who is member of a smallpox response team; (3) public safety personnel, including law enforcement officers, firefighters, security, and EMS personnel who may be asked to assist smallpox response teams; and (4) personnel associated with certain U.S. government facilities abroad. At this point, individuals being voluntarily vaccinated are hospital and public health workers in their roles as first responders who would be responsible for immunizing and treating others in the event of a smallpox outbreak.

Federal Tort Claims Act

The Federal Tort Claims Act (FTCA) permits a civil action for money damages against the United States for personal injury or property damage caused by the negligent or wrongful act or omission of any employee of the government acting within the scope of his office or employment under circumstances where the U.S., if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The elements of the cause of action under the FTCA are generally determined by the substantive law of the state where the act or omission occurred.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 19 Nay 3

